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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,529	11/24/2003	Edward Alan Sierecki	P24418	1987

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GREENBLUM & BERNSTEIN, P.L.C.
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RESTON, VA 20191

EXAMINER

PASIA, REDENTOR M

ART UNIT	PAPER NUMBER
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2616

NOTIFICATION DATE	DELIVERY MODE
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02/28/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/718,529	Applicant(s) SIERECKI, EDWARD ALAN	
	Examiner Redentor M. Pasia	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 11 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is in no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____
 Claim(s) objected to: _____
 Claim(s) rejected: 1-18.
 Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____


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 SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

As to claim 1 (to 13), Applicant argues that DiMambro et al. US 2004/0143781 A1 (page 3, Applicant's Remarks) is directed to a system and method for performing non-intrusive loopback *testing* in a communication device and it is clear that DiMambro et al. is directed to the *testing* of a communications device and not re-routing of a circuit, if there is a failure.

The Examiner agrees that DiMambro performs the function as indicated above, **however**, DiMambro was introduced to combine with the primary reference, Zheng et al. US 6,611,522 B1, since Zheng does not show "*a physical loopback and a step to re-route a circuit, if there is a failure in the interface...*" (refer to Office Action page 6, mailed November 28, 2007). DiMambro shows a physical loopback in Figure 1. Zheng was modified by DiMambro by bringing in the physical loopback (that Zheng was lacking) and **not** the method of performing non-intrusive loopback testing. The combination of Zheng and DiMambro shows all of the elements of claim 1 except "*the step to re-route a circuit, if there is a failure...*" Later on, Drake, Jr. et al US 6,895,024 B1 was combined with modified Zheng (Zheng in view of DiMambro) to cure the deficiency shown above, which will be explained later.

Also, Applicant also argues (at page 4, Applicant's Remarks) that the loopback connection 50 of Drake does not provide a re-routing of a circuit if there is a failure in the circuit and the loopback connection 50 of DRAKE, Jr. et al. is used for loopback *testing*, (see col. 4, lines 48-52), and it is therefore, substantially cumulative of

DiMAMBRO et al. Also in the same lines, Applicant argues that the re-routing of the circuit in DRAKE, Jr. et al is performed by redundant switches or paths (see col. 7, lines 15-21 of DRAKE, Jr. et al.), instead of the loop-back or connection and the non-redundant layer two and layer three switches of Applicant's claimed invention.

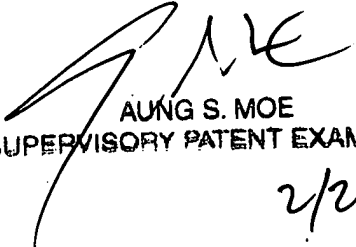
The Examiner disagrees with the Applicant. Drake was combined with modified Zheng (see Office Action page 6-7, mailed November 28, 2007), to remedy the deficiency, of modified Zheng. Modified Zheng does not show "*the step to re-route a circuit, if there is a failure...*" Drake shows "*the step to re-route a circuit, if there is a failure...*" in Figures 3-4, col. 8, line 17 to col. 9, line 17. Moreover, the claim language used in claim 1 does not limit the claimed invention to an environment where it cannot be applied in testing/troubleshooting environment. Claim language used in claim 1, does show a multi-service platform that is applied to a general environment and not in a specific environment (i.e. non-testing suitable environment). Modified Zheng shows the multiservice platform with the layer 2 and 3 components with the physical loopback (shown by DiMambro). Examiner also asserts that Drake was combined to modified Zheng to remedy the deficiency "*the step to re-route a circuit, if there is a failure...*" By combining the said references, further modified Zheng shows all of the elements shown in claim 1.

As to claim 14(to 18), the Applicant argues that Willis US 6,909,720 B1 does not show "a physical loopback and the step wherein a circuit is re-routed, if there is a failure in the interface between a layer two switch and the platform" submits that DiMambro et al. and Drake, Jr. et al. fail to cure the deficiencies of WILLIS for the same reasons that

DiMambro et al. and Drake, Jr. et al. fail to cure the deficiencies of ZHENG et al (based from the arguments submitted with regards to claim 1).

The Examiner disagrees with the Applicant. The Examiner already answered the Applicant's arguments as shown above. Please refer to the above arguments.

To conclude, the Applicant generally bases his arguments, on the fact that Drake and DiMambro perform diagnostic testing and not re-routing of a circuit. As shown, in the Office Action mailed November 28, 2007, that Zheng was modified to include the physical loopback of DiMambro and further modified to include Drake to remedy the deficiency *"the step to re-route a circuit, if there is a failure..."* As noted earlier, claim language set forth in claim 1 shows that the multi-service platform is applied in a general environment, and does not show that it has to be applied in a specific environment (i.e. an environment where diagnostic testing is not allowed.). Unless, the claim is further amended to include specifics on what type of environment it can only be applied to, claims 1-13 are obvious over Zheng in view of DiMambro in further view of Drake and claims 14-18 are obvious over Willis in view of DiMambro in further view of Drake.


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2/21/08